

1 ROBERT W. FERGUSON
2 *Attorney General*

3 JEFFREY T. SPRUNG, WSBA #23607
4 ZACHARY P. JONES, WSBA #44557
5 JOSHUA WEISSMAN, WSBA #42648
6 PAUL M. CRISALLI, WSBA #40681
7 NATHAN K. BAYS, WSBA #43025
8 BRYAN M.S. OVENS, WSBA #32901

Assistant Attorneys General
8127 W. Klamath Court, Suite A
Kennewick, WA 99336
(509) 734-7285

8 **UNITED STATES DISTRICT COURT**
9 **EASTERN DISTRICT OF WASHINGTON**
10 **AT SPOKANE**

11 STATE OF WASHINGTON, et al.,

12 Plaintiffs,

13 v.

14 UNITED STATES DEPARTMENT
15 OF HOMELAND SECURITY, a
16 federal agency, et al.

17 Defendants.
18
19
20
21
22

NO. 4:19-cv-05210-RMP

PLAINTIFFS' RESPONSE TO
NOTICE OF SUPPLEMENTAL
AUTHORITY

1 Plaintiff States respectfully submit this response to Defendants’ Notice of
 2 Supplemental Authority regarding Plaintiffs’ Motion to Compel (ECF No. 206).
 3 The decision Defendants attach—*Almaklani v. Trump*, 18CV398NGGCLP,
 4 2020 WL 1282920 (E.D.N.Y. Mar. 17, 2020)—is distinguishable from
 5 Plaintiffs’ pending Motion in several respects.

6 First, plaintiffs sought discovery in *Almaklani* at the “eleventh[] hour.”
 7 ECF No. 206 at 9. The case had been pending for over two years, and at the
 8 time of the court’s decision, the federal defendants had already moved for
 9 summary judgment. *Id.* at 5, 8. By contrast, Plaintiffs here promptly filed their
 10 Motion to Compel before any dispositive motions have been filed.

11 Second, unlike in *Almaklani*, the constitutional claim here is distinct from
 12 the APA claims. *See* ECF No. 200 at 7 (the “Equal Protection claim is not
 13 merely duplicative of the APA claims”); *cf.* ECF No. 206 at 16 (acknowledging
 14 split of authority and citing cases disallowing discovery where “constitutional
 15 claims fundamentally overlap with the APA claims”).

16 Third, Plaintiffs have made a more than adequate showing to permit
 17 discovery. Unlike in *Almaklani*, *see* ECF No. 206 at 18–19, Plaintiffs proffered
 18 significant public-record evidence—including statements and emails—that
 19 suggests certain federal officials may have acted with unlawful discriminatory
 20 intent, *see* ECF No. 195 at 13–15; ECF No. 200 at 7–8.

1 Finally, the *Almaklani* decision says nothing about the first of the two
2 types of relief Plaintiffs seek: a privilege log provided by Defendants to
3 accompany the Administrative Record. *See* ECF No. 195 at 5–9.

4 The *Almaklani* case therefore does not support Defendants’ position.
5 Plaintiffs respectfully request that the Court grant their Motion to Compel
6 (ECF No. 195) in its entirety.

7 RESPECTFULLY SUBMITTED this 30th day of March 2020.

8 ROBERT W. FERGUSON
9 Attorney General of Washington

10 /s/ Jeffrey T. Sprung

JEFFREY T. SPRUNG, WSBA #23607

11 ZACHARY P. JONES, WSBA #44557

JOSHUA WEISSMAN, WSBA #42648

12 PAUL M. CRISALLI, WSBA #40681

NATHAN K. BAYS, WSBA #43025

13 BRYAN M.S. OVENS, WSBA #32901

Assistant Attorneys General

8127 W. Klamath Court, Suite A

14 Kennewick, WA 99336

(509) 734-7285

15 jeff.sprung@atg.wa.gov

zach.jones@atg.wa.gov

16 joshua.weissman@atg.wa.gov

paul.crisalli@atg.wa.gov

17 nathan.bays@atg.wa.gov

18 bryan.ovens@atg.wa.gov

Attorneys for Plaintiff State of Washington

1 MARK R. HERRING
2 Attorney General of Virginia

3 /s/ Michelle S. Kallen
MICHELLE S. KALLEN, VSB #93286
4 Deputy Solicitor General
JESSICA MERRY SAMUELS, VSB #89537
5 Assistant Solicitor General
RYAN SPREAGUE HARDY, VSB #78558
6 ALICE ANNE LLOYD, VSB #79105
MAMOONA H. SIDDIQUI, VSB #46455
7 Assistant Attorneys General
Office of the Attorney General
202 North Ninth Street
8 Richmond, Virginia 23219
(804) 786-7240
9 MKallen@oag.state.va.us
JSamuels@oag.state.va.us
10 RHardy@oag.state.va.us
ALloyd@oag.state.va.us
11 MSiddiqui@oag.state.va.us
SolicitorGeneral@oag.state.va.us
12 *Attorneys for Plaintiff Commonwealth of*
13 *Virginia*

14 PHIL WEISER
15 Attorney General of Colorado

16 /s/ Eric R. Olson
ERIC R. OLSON, #36414
17 Solicitor General
Office of the Attorney General
18 Colorado Department of Law
1300 Broadway, 10th Floor
19 Denver, CO 80203
(720) 508 6548
Eric.Olson@coag.gov
20 *Attorneys for Plaintiff the State of Colorado*

1 KATHLEEN JENNINGS
Attorney General of Delaware
2 AARON R. GOLDSTEIN
State Solicitor
3 ILONA KIRSHON
Deputy State Solicitor
4

/s/ Monica A. Horton
5 MONICA A. HORTON, #5190
Deputy Attorney General
6 820 North French Street
Wilmington, DE 19801
7 Monica.horton@delaware.gov
Attorneys for Plaintiff the State of Delaware
8

9 KWAME RAOUL
Attorney General of Illinois
10

/s/ Liza Roberson-Young
11 LIZA ROBERSON-YOUNG, #6293643
Public Interest Counsel
12 Office of the Illinois Attorney General
100 West Randolph Street, 11th Floor
13 Chicago, IL 60601
(312) 814-5028
14 ERobersonYoung@atg.state.il.us
Attorney for Plaintiff State of Illinois
15

16 CLARE E. CONNORS
Attorney General of Hawai‘i
17

/s/ Lili A. Young
18 LILI A. YOUNG, #5886
Deputy Attorney General
19 Department of the Attorney General
425 Queen Street
20 Honolulu, HI 96813
(808) 587-3050
21 Lili.A.Young@hawaii.gov
Attorneys for Plaintiff State of Hawai‘i
22

1 BRIAN E. FROSH
2 Attorney General of Maryland

3 /s/ Jeffrey P. Dunlap
4 JEFFREY P. DUNLAP, #1812100004
5 Assistant Attorney General
6 200 St. Paul Place
7 Baltimore, MD 21202
8 T: (410) 576-7906
9 F: (410) 576-6955
10 JDunlap@oag.state.md.us
11 *Attorneys for Plaintiff State of Maryland*

12 MAURA HEALEY
13 Attorney General of Commonwealth of
14 Massachusetts

15 /s/ Abigail B. Taylor
16 ABIGAIL B. TAYLOR, #670648
17 Chief, Civil Rights Division
18 DAVID UREÑA, #703076
19 Special Assistant Attorney General
20 ANGELA BROOKS, #663255
21 Assistant Attorney General
22 Office of the Massachusetts Attorney General
One Ashburton Place
Boston, MA 02108
(617) 963-2232
abigail.taylor@mass.gov
david.urena@mass.gov
angela.brooks@mass.gov
*Attorneys for Plaintiff Commonwealth of
Massachusetts*

1 DANA NESSEL
2 Attorney General of Michigan

3 /s/Toni L. Harris
4 FADWA A. HAMMOUD, #P74185
5 Solicitor General
6 TONI L. HARRIS, #P63111
7 *First Assistant Attorney General*
8 Michigan Department of Attorney General
9 P.O. Box 30758
10 Lansing, MI 48909
11 (517) 335-7603 (main)
12 HarrisT19@michigan.gov
13 Hammoudfl@michigan.gov
14 *Attorneys for the People of Michigan*

15 KEITH ELLISON
16 Attorney General of Minnesota

17 /s/ R.J. Detrick
18 R.J. DETRICK, #0395336
19 *Assistant Attorney General*
20 Minnesota Attorney General's Office
21 Bremer Tower, Suite 100
22 445 Minnesota Street
St. Paul, MN 55101-2128
(651) 757-1489
(651) 297-7206
Rj.detrick@ag.state.mn.us
Attorneys for Plaintiff State of Minnesota

1 AARON D. FORD
Attorney General of Nevada

2
3 /s/ Heidi Parry Stern
HEIDI PARRY STERN, #8873
Solicitor General
Office of the Nevada Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
HStern@ag.nv.gov
Attorneys for Plaintiff State of Nevada

7
8 GURBIR S. GREWAL
Attorney General of New Jersey

9 /s/ Glenn J. Moramarco
GLENN J. MORAMARCO, #030471987
Assistant Attorney General
Office of the Attorney General
Richard J. Hughes Justice Complex
25 Market Street, 1st Floor, West Wing
Trenton, NJ 08625-0080
(609) 376-3232
Glenn.Moramarco@law.njoag.gov
Attorneys for Plaintiff State of New Jersey

15 HECTOR BALDERAS
Attorney General of New Mexico

16 /s/ Tania Maestas
TANIA MAESTAS, #20345
Chief Deputy Attorney General
P.O. Drawer 1508
Santa Fe, New Mexico 87504-1508
tmaestas@nmag.gov
Attorneys for Plaintiff State of New Mexico

PETER F. NERONHA
Attorney General of Rhode Island

/s/ Lauren E. Hill

LAUREN E. HILL, #9830
Special Assistant Attorney General
Office of the Attorney General
150 South Main Street
Providence, Rhode Island 02903
(401) 274-4400 x 2038
E-mail: lhill@riag.ri.gov
Attorneys for Plaintiff State of Rhode Island

DECLARATION OF SERVICE

I hereby declare that on this day I caused the foregoing document to be electronically filed with the Clerk of the Court using the Court's CM/ECF System which will serve a copy of this document upon all counsel of record.

DATED this 30th day of March 2020, at Seattle, Washington.

/s/ Jeffrey T. Sprung

JEFFREY T. SPRUNG, WSBA #23607

Assistant Attorney General